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REPORT
No. 441

APPOINTMENT OF CUSTOMS COURT EMPLOYEES

JUNE 29, 1959.—Ordered to be printed

Mr. LANGER, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany S. 1947]

The Committee on the Judiciary, to which was referred the bill (S. 1947) relating to the authority of the Customs Court to appoint employees, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to confer on the Customs Court authority to appoint a clerk, chief deputy clerk, assistant clerk, deputies, assistants, and other employees, and to further authorize the appointment of a marshal and deputy marshals. Such appointments are intended to be in accordance with the presently prevailing laws relating to such appointments in other U.S. courts.

STATEMENT

This proposal emanates from the Committee on Jurisdiction and Legislation of the Customs Court, and was submitted to the Judicial Conference of the United States for its action thereon. The Judicial Conference of the United States has heretofore made an expression of opinion in regard to the subject matter herein discussed but has not formally taken action on the specific bill now before the committee. The Administrative Office of the U.S. Courts submitted a report to the committee which analyzes the provisions of the legislation and states that the present bill appears to be in accord with the previous views of the Judicial Conference.

The report of the Administrative Office of the U.S. Courts discusses the legislation in full and is as follows:

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
Washington, D.C., May 27, 1959.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate.

DEAR SENATOR EASTLAND: S. 1947, on which your letter of May 15 requests our report, has not been before the Judicial Conference of the United States, and accordingly we are not in a position to furnish a conference report on the measure.

However, a proposal to revise the arrangements for the employment of the staff of the U.S. Customs Court was before the Judicial Conference a year ago, and it is believed the provisions now proposed are premised upon the same principles then agreed upon. The Conference resolution adopted in March 1958 (conference report, p. 9), recites the following premises:

(a) The Customs Court is a court of the United States within the Federal judiciary established under article III of the Constitution.

(b) The Director of the Administrative Office of the U.S. Courts is required under the statute to fix the compensation of employees of the U.S. courts (28 U.S.C. 604).

(c) The arrangements with respect to the employees of the Customs Court should be in accord with those provided for the other courts of the United States.

The present bill appears to be in accord therewith.

In detail, the changes which the bill would effect are these:

(1) Transfer the authority to appoint the clerk and other court employees from the chief judge of the court to the court as a whole. This would conform to the arrangements in effect for the U.S. district courts with respect to the appointment of the clerk of the court, the referee in bankruptcy, U.S. commissioners, court reporters, and probation officers. As in the case of other U.S. courts, the number of deputies and assistants, in addition to the clerk, and their rate of compensation would be understood to continue to be determined by the Director of the Administrative Office of the U.S. Courts, subject to the supervision and direction of the Judicial Conference, under section 604 of title 28. In addition, they would be subject to budgetary limitations as a result of the annual appropriation process.

(2) Delete from the present Customs Court statute the references to the civil service laws with respect to its appointments. The background is that this small group of about 70 persons is the only one under any court of the U.S. judicial system that is subject to the Civil Service Act of 1883. It is to be explained by the history of the court, which was originally the Board of General Appraisers in the Treasury Department, the employees of which were appointed by the Attorney General, in conformity to the civil service laws, as provided for by the successive tariff acts codified in 19 U.S.C. 6. In the Codification Act of 1948 this authority was transferred to the Customs Court, but there remained the anomaly that the appointments, though made by a part of the judiciary, were continued subject to the civil service laws administered by the executive branch. The present provision would correct that inconsistency. It would

not, of course, be intended to affect the employees' coverage under the Retirement Act and the Federal Employees Group Life Insurance Act.

(3) Making, as to the marshal and deputy marshals, the same changes as just outlined, it is next provided that the Customs Court may appoint a marshal and deputies subject to removal by the court. This is a revision of the present language, which reads: "The chief judge of the Customs Court in accordance with the civil service laws may appoint a marshal, deputies, and assistants."

(4) A new paragraph is added to section 872 of title 28 directing the marshal of the Customs Court—instead of the U.S. marshal for the district court—to disburse its appropriations for salaries and expenses under regulations prescribed by the Director of the Administrative Office of the U.S. Courts. The new paragraph adopts the language of the present section 550(b) with respect to the similar functions of the marshals for the district courts. A further paragraph repeats the language of section 550(c) to sanction disbursements without the requirement of the payee's verification under oath.

(5) A new section 873 would authorize the Customs Court to appoint criers as it may require, to perform also the duties of bailiffs and messengers. This is comparable to the present section 755 of title 28 which authorizes each district judge to appoint a crier who shall perform also the duties of bailiff and messenger. In practice, many of the district courts do not require the services of a crier and it is understood the Customs Court likewise has no plans to call for the full number of such attachés. However, in the light of the language above discussed, directing the marshal and his deputies to attend court at its sessions and authorizing the court to appoint such assistants and other employees as may be necessary, we are not advised as to the necessity of the proposed new section 873.

(6) Section 2 would make a conforming amendment to section 550(b) to accord with the new provision discussed under paragraph (4) above.

(7) Under the present law the fiscal affairs and the clerical force of the Customs Court are subject to the control of the chief judge. Section 3 of the new bill directs that instead they be supervised by the chief judge with the approval of the court. This is a matter pertaining to the internal administration of the court.

(8) A final section is a savings clause undertaking to preserve the civil service status of the present employees of the Customs Court.

Certain other language of the bill, constituting only a reenactment of the present law, is not here commented on.

In summary, the Customs Court, in a letter to us over the signature of the chairman of its Committee on Jurisdiction and Legislation, has stated that since it is a constitutional court it should be governed under the statutes and regulations which control the functions of other Federal courts. It is believed this is in accord with the principles of the Judicial Conference resolution of March 1958 cited above. If your committee would prefer to have a specific resolution of the Judicial Conference on the present bill, we shall be glad to refer the bill to the Conference for the purpose of its consideration, if possible at its next meeting, in September 1959. Meanwhile, if our Office can be of help to your committee or its staff on the proposed measure, I hope you will feel free to call upon us.

Sincerely yours,

WARREN OLNEY III, *Director*.

The committee has received a communication from the chairman of the Committee on Jurisdiction and Legislation of the Customs Court in answer to an inquiry as to what additional costs would be involved as a result of this legislation. That letter, which is hereto attached and made a part hereof, indicates that under the proposed legislation the cost would run between \$9,000 and \$9,600 per annum. This represents salaries to be paid to three criers, ranging from \$3,000 to \$3,200 each. The criers, as is indicated, would also accomplish the duties of bailiffs and messengers, and the other employees of the court would remain as now constituted, with no increase in cost to the Government.

The committee, after a consideration of the foregoing, believes that there is merit to the legislation. This legislation would bring the internal administration of the Customs Court in line with the internal administrative procedures of other U.S. courts and the committee believes this to be desirable. Inasmuch as the Customs Court is a court of the United States within the Federal judiciary established under article III of the Constitution, and inasmuch as the arrangements with respect to the employees of the Customs Court will be in accord with those provided for other courts of the United States, the committee recommends that the bill, S. 1947, be considered favorably.

U.S. CUSTOMS COURT,
New York, May, 1959.

HON. JAMES O. EASTLAND,
*Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.*

DEAR SENATOR EASTLAND: I have your letter of May 15, in which you were kind enough to enclose six copies of S. 1947 introduced by Senator Langer. It occurs to me that you might like to have the enclosed outline of "Why United States Customs Court Needs To Be Modernized."

With specific reference to your inquiry as to how the staff covered by the proposed legislation (clerk, chief deputy clerk, assistant clerk, deputies, assistants, marshal, deputy marshals, criers, bailiffs, messengers, and other employees) would differ from that now used by the court, I may say that the court is now fully staffed except for criers, bailiffs, and messengers. In other words, we propose to appoint three criers to act also as bailiffs and messengers; not one for each judge, but one for each of our three divisions. As for the cost involved, the annual salary proposed for each of these three criers is \$3,000 to \$3,200. This item was included in our budget for the next fiscal year and has already been approved from that standpoint.

May I point out that there is no provision in this bill for any personnel or authority that other Federal courts do not already have.

Thanking you for your interest in this legislation and assuring you that if there are any further questions you desire to ask it will be a pleasure to answer them, I am,

Yours sincerely,

JED JOHNSON,
Chairman, Committee on Jurisdiction and Legislation.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 28, UNITED STATES CODE

CHAPTER 55—CUSTOMS COURT

Sec.

871. **[Clerk, deputies, assistants and other employees.]***Clerk, chief deputy clerk, assistant clerk, deputies, assistants, and other employees.*872. **[Marshal; appointment.]***Marshal and deputy marshals.*873. *Criers, bailiffs, and messengers.*§ 871. **[Clerk, deputies, assistants and other employees]***Clerk, chief deputy clerk, assistant clerk, deputies, assistants, and other employees.*

[The chief judge of the Customs Court in accordance with the civil service laws may appoint a clerk, deputies, assistants and such other employees as may be necessary for the effective dispatch of the business of the court.]

The Customs Court may appoint a clerk, a chief deputy clerk, an assistant clerk, deputy clerks, and such deputies, assistants, and other employees as may be necessary for the effective dispatch of the business of the court, who shall be subject to removal by the court.

§ 872. **[Marshal; appointment]***Marshal and deputy marshals.*

[The chief judge of the Customs Court in accordance with the civil service laws may appoint a marshal, deputies and assistants.]

The Customs Court may appoint a marshal and deputy marshals, who shall be subject to removal by the court.

The marshal and his deputies **[and assistants]** shall attend court at its sessions, serve and execute all process and orders issued by it, and exercise the powers and perform the duties concerning all matters within such court's jurisdiction assigned to them by the court.

Under regulations prescribed by the Director of the Administrative Office of the United States Courts, the marshal shall pay the salaries, office expenses, and travel and subsistence allowances of the judges, officers, and employees of the court, and shall disburse funds appropriated for all expenses of the court.

On all disbursements made by the marshal of the Customs Court for official salaries or expenses, the certificate of the payee shall be sufficient without verification on oath.

§ 873. *Criers, bailiffs, and messengers.*

The Customs Court may appoint such criers as it may require for said court, which criers shall also perform the duties of bailiffs and messengers and such other duties as the court directs and shall be subject to removal by the court.

CHAPTER 33—UNITED STATES MARSHALS

§ 550. Disbursement of salaries and expenses

(a) United States marshals, under regulations prescribed by the Attorney General, shall pay the salaries, office expenses and travel and subsistence allowances of United States attorneys, their assistants, clerks and messengers, and of the marshals, their deputies and clerical assistants.

(b) Under regulations prescribed by the Director of the Administrative Office of the United States Courts, the marshals shall pay the salaries, office expenses, and travel and subsistence allowances of circuit and district judges, [judges of the Customs Court,] clerks of court and their deputies, court reporters, and other personnel of courts within their districts.

(c) * * *

CHAPTER 11—CUSTOMS COURT

§ 253. Duties of chief judge; precedence of judges

The chief judge of the Customs Court, *with the approval of the court*, shall [control] *supervise* the fiscal affairs and clerical force of the court [;] . *The chief judge shall* assign or reassign, before trial and under rules of the court, any case for hearing, determination, or both; and promulgate dockets.

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